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to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313

on: MAR. 25, 2004

QUINE INTELLECTUAL PROPERTY LAW GROUP, P.C.

By:

Amelia Weintraub

Atty Docket No: 529-000220US

RECEIVED

APR 07 2004

OFFICE OF PETITIONS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Fred Cohen, et al.

Application No.: 10/678,609

Filed: October 3, 2003

For: **METHOD AND APPARATUS
PROVIDING DECEPTION AND/OR
ALTERED EXECUTION OF LOGIC IN AN
INFORMATION SYSTEM**

Examiner: Not Yet Assigned

Art Unit: 2154

**DECLARATION UNDER 37 C.F.R.
1.47 (a) REGARDING JOINT
INVENTOR WHO REFUSES TO
SIGN**

Commissioner for Patents
P.O. Box 1450, Alexandria, VA 22313

Dear Sir:

STATEMENT OF LAST KNOWN ADDRESS

(1) Pursuant to 37 C.F.R. 1.47 (a), the undersigned attorney of record hereby attests that the last known address of the inventor is as follows:

Fred Cohen
572 Leona Drive
Livermore, CA 94550

This is the last known address at which the inventor customarily receives or received mail and is the last known residence of the non-signing inventor. At the present time, no other addresses are known for the inventor.

STATEMENT OF PERTINENT FACTS AND CIRCUMSTANCES

(2) The facts regarding the attempt to have the inventor sign the declaration are as follows:

(a) Fred Cohen was employed by Sandia Corporation from 1996 through development of the present invention and filing of the priority provisional application.

(b) In November 2002, I was informed that Fred Cohen was no longer employed by Sandia Corporation. In a telephone call with Mr. Cohen in November 2002, Mr. Cohen informed me that until Sandia Corporation completed a post-employment agreement with him, he would not review any non-

provisional patent applications and that an application should not be sent to him. He also stated that he would not sign any inventorship declarations regarding the subject patent application.

(b) In May 2003, I was informed by Kurt Olsen of Sandia Corporation that no agreement had yet been made with Fred Cohen and I was asked to contact Mr. Cohen.

(c) On 8 May 2003, I was informed by Mr. Cohen by email that he would not participate in review of the patent application or sign an inventor declaration.

(d) On 5 December 2003, I conducted a lengthy telephone interview with Mr. Cohen. I offered, again, to forward a copy of the application as filed to Mr. Cohen. Mr. Cohen stated that he would not sign any inventorship declaration regarding the subject application or review any such application.

(e) The last contact our firm had with Fred Cohen was on 5 December 2003 as discussed above.

PROOF OF THE PERTINENT FACTS

(3) Attorney of Record showing that Fred Cohen refuses to sign after diligent effort consists of the statements provided above, and of the attached document, which I attest is a true copy of the original. The following document is attached hereto:

(a) Copy of email dated 8 May 2003 as described above (Attachment A).

(3) Furthermore, assignee's showing that they have a right to take action in this matter is demonstrated by the following:

(b) Copy of Sandia Corporation Employee Proprietary Information and Innovation Agreement signed by Mr. Fred Cohen of 15 July 1996 (Attachment B).

(c) Copy of Sandia Corporation Employee's Patent and Proprietary Information Certification signed by Mr. Fred Cohen of 21 November 2002 (Attachment C).

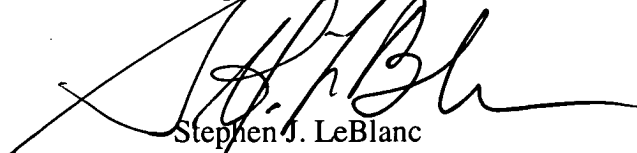
SHOWING THAT SUCH ACTION IS NECESSARY TO PRESERVE THE RIGHTS OF THE PARTIES OR TO PREVENT IRREPARABLE DAMAGE

(4) The subject application discloses valuable research and innovation developed using facilities of Sandia Corporation and to which Sandia Corporation has ownership and/or other rights. Any delay in completing the filing of this application will damage Sandia Corporation's present licensing opportunities and future rights to the inventions disclosed in this application. Therefore, acceptance of this petition is necessary to preserve the rights of Sandia Corporation and/or to prevent irreparable damage to their interests in this invention.

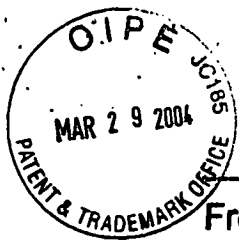
(5) I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this statement is directed.

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PTO Customer No.: **22798**
Deposit Account No.: **50-0893**

Respectfully submitted,



Stephen J. LeBlanc
Reg. No: 36,579
Attorney of Record



-----Original Message-----

From: Fred Cohen [mailto:fc@all.net]
Sent: Thursday, May 08, 2003 5:14 AM
To: Stephen J. LeBlanc
Cc: Kurt C Olsen
Subject: Re: IR

Per the message sent by Stephen J. LeBlanc:

> Hello Fred,

Hi Steve.

> As I think you know, I did receive direction from Kurt and Craig to work
> with you on doing the non-provisional Sandia patents.

Sure - but I don't have any mandate or agreement from them with
regards
to working on it. So until they complete a contract with me over this,
I will have to decline to participate...

FC

Employee: Frederick Bernard
Print Full NameUnit: _____
Location: Sandia Corporation

THIS AGREEMENT made between me, the above named person, and Sandia Corporation, A Delaware Corporation, hereinafter referred to as "Sandia" or the Corporation, WITNESSETH:

Sandia Corporation has developed and uses technical and non-technical information vital to the success of the Corporation's business. Generally, Sandia employees become acquainted with this information and, depending on job assignments and responsibilities, may contribute to it either through inventions, discoveries, improvements, computer programs, mask works, (collectively called "Innovations"), or through studies, analyses, proposals, business plans or otherwise. Therefore, it is necessary for Sandia to protect certain of this technical and non-technical information generated by its employees by holding it as proprietary and confidential, or by obtaining statutory protection (patents, trademarks, mask works, copyrights) or common law protection (trade secrets) or both.

In consideration of and as part of the terms of my employment or regular employment by Sandia and the salary or wages paid me during such employment, it is hereby agreed:

1. PROPRIETARY INFORMATION

I shall not, except as authorized by the Corporation, at any time during or after my employment directly or indirectly disclose to any other person or entity any proprietary or sensitive information of the Corporation or of others (collectively called "Proprietary Information"), which has come into the Corporation's or my possession in the course of my employment with the Corporation; nor shall I use any such Proprietary Information for my personal use or advantage or make it available to others. Proprietary Information includes existing and contemplated technical information such as, for example, compositions, formulas, products, processes, methods, systems, designs, specifications, mask works, testing or evaluation procedures, machines, manufacturing procedures, production techniques, research and development activities, inventions, discoveries and improvements and also existing and contemplated business, marketing and financial information such as, for example, business plans and methods, marketing information, cost estimates, forecasts, financial data, bid and proposal information, customer identification, and sources of supply.

All information, both technical and non-technical, regarding the Corporation's businesses in whatever form, including but not limited to text, drawings, mask works or computer software programs, is presumed to be proprietary and confidential until it becomes public information lawfully and without breach of confidential obligation.

2. INNOVATIONS

I agree to disclose promptly and fully to the Corporation all Innovations and/or Work for Hire (works of authorship prepared by me within the scope of my employment), whether or not patentable, copyrightable or registrable, including but not limited to products, processes, methods, systems, designs, techniques, mask works, computer programs, facilities, equipment, and devices that have been or may be conceived, made or authored by me solely or jointly with others during the period of my employment with the Corporation: (a) which are along the lines of or relate to the business, work, or investigations of the Corporation or of any company with which it is affiliated; (b) which result from or arise out of any work that I may do for or on behalf of the Corporation; (c) which result from or arise out of any Proprietary Information that may have been disclosed or otherwise made available to me as a result of duties assigned me by the Corporation; or (d) that are otherwise made through the use of the Corporation's time facilities or materials. All such Innovations and Work for Hire shall be the sole and exclusive property of Sandia and I hereby assign to the Corporation all of my right, title and interest therein.

3. EXECUTION OF DOCUMENTS

I also agree to execute assignments to the Corporation or its assigns, nominees, or successors of all my right, title, or interest in and to: (a) any and all Innovations described in paragraph 2 above; (b) any and all patent, trademark, copyright and mask works registration applications therefor; (c) all priority rights acquired under the International Convention for Protection of Industrial Property by filing of such applications; and (d) all patents, trademark, copyright and mask works registrations that may be granted therefor throughout the world. I further agree during and after my employment to sign all lawful papers and otherwise assist without charge and in every lawful way the Corporation and its assigns, nominees or successors at its or their request to obtain and sustain such patents, trademark, copyright and mask works registrations for its benefit in any and all countries.

4. NOTICE OF RIGHT UNDER STATE STATUTES

No provision in this Agreement is intended to require assignment of any of my rights in an invention that I have developed entirely on my own time without using the Corporation's equipment, supplies, facilities, or proprietary information except for those inventions that either: (1) relate at the time of conception or reduction to practice of the invention to the Corporation's business, or actual or demonstrably anticipated research or development of the Corporation; or (2) result from any work performed by me for the Corporation.

5. RECORDS AND DOCUMENTS

All records, documents, and other writings including text, drawings, computer software programs, mask works or works of authorship relating to or containing Proprietary Information as defined above, and which are prepared or created by me or which may come into my possession during my employment, are deemed to be the property of the Corporation. Upon termination of my employment, I agree to leave all such records, documents, and writings and all copies thereof with the Corporation.

6. LEGALLY BINDING AGREEMENT

This Agreement shall be binding upon me, my heirs, administrators, assigns, executors, or other legal representatives and shall be binding upon and inure to the benefit of Sandia, its assigns, nominees or successors; however, neither this Agreement nor any provision thereof shall be construed to be an employment agreement. I agree that either during or after my employment the Corporation may advise others of the existence of this Agreement and the provisions of all or any part thereof.

7. PRIOR INVENTIONS

Listed and briefly described on the *attached sheets* are all inventions not previously assigned to my former employers and which I conceived and made prior to my employment with Sandia. Such listed inventions are not included under this Agreement. I agree to notify the Corporation promptly in writing if their actual or projected use comes to my attention. I also agree that I will not disclose to or use on behalf of Sandia any proprietary or confidential information of any third party without authorization therefrom.

SANDIA CORPORATION

By: Renee L. Haynes
Title: Human Resources Coordinator

EMPLOYEE:

Signature of Employee: Frederick BernardDate: 1/15/98

Note: The term "Confidential" as used herein does not refer to official security classification of the United States Government.

EMPLOYEE'S PATENT AND PROPRIETARY INFORMATION CERTIFICATION

I certify, to the best of my knowledge and belief,

- (1) THAT I have furnished complete information to the Patent Manager, Sandia Corporation, concerning every invention, discovery or improvement which I have made or conceived during the period of my employment which falls within the scope and terms of my Employee's Agreement to Assign Inventions and to Keep Information Proprietary ("Employee's Agreement");
- (2) THAT I do not have in my possession as of the effective date of my termination any records of Sandia Corporation or the United States Department of Energy such as notebooks, documents, drawings, data sheets, photographic negatives or prints, or the like, except such as I may be permitted to retain under express authorization given on behalf of Sandia Corporation;
- (3) THAT, if in the future I should realize either or both of the foregoing statements are incorrect, I will promptly communicate with the Patent Manager, Sandia Corporation, informing him of any facts inconsistent with this certification;
- (4) THAT, subsequent to the termination of my employment, I will abide by the terms of my agreement regarding private or proprietary information as set forth in my Employee's Agreement;
- (5) THAT my permanent address at which I may be contacted is:

(Print or Type)

Cohen, Frederick B.

NAME (LAST, FIRST, MIDDLE)

182-50-7614

SS Number

572 Leona Dr.

ADDRESS

Livermore

CITY

CA

STATE

94550

ZIP CODE



SIGNATURE

11/2/02

DATE

8941

ORGANIZATION

1996

YEAR OF HIRE